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The legal issues of investment activity in nature

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Abstract

This article considers the problems of legal regulation of investment activities in nature including the use of mineral resources and other natural resources. Moreover, environmental and investment laws of the Republic of Kazakhstan are compared in this research paper. Legislative issues of attracting investments in natural resources, problems of private property in the bowels of the earth, problems of the investment agreement and role of investment activity in usage of natural resources are discussed in this work.

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1. Introduction

Nowadays, one of the priorities of the state policy of the Republic of Kazakhstan is the maintenance of a favorable investment climate and further encouragement of foreign direct investment in economy.

Attracting investment is one of the most important factors determining the growth and competitiveness of the national economy, as well as facilitating its integration into global production processes.

The current trend in development of international economic relations is the inexorable growth of the role of interstate investment cooperation. Phenomenon abroad of the XX and XXI centuries is the fact that international investment flows as a whole exceeded the volume of international trade in goods and services. In this modern world economy becomes more and more clearly single, integrated, mutually interdependent - global in scope and far-reaching legal implications. The international community pays much attention for the problems of attracting foreign investment.

The literature proposes to consolidate the entire set of elements relating to financial support of environmental activities under the category "financial mechanism of natural resources and protection of the environment", which is caused by the fact that the stability of relations arising in the process of environmental financing can be provided by the coordinated development of all sources and financing instruments combined in a single system.

2. The legal aspects of investment activity in nature

In the foreseeable and distant future, the development of Kazakhstani international economic relations would be possible only in case of recognition and respect for international law and laws of other countries that regulate relations in the sphere of using nature and subsoil, including the processing of mineral raw materials and investment.

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Significant global reserves of mineral resources located in the Republic of Kazakhstan as well as the active entry of the country in foreign economic relation is a prerequisite for the recognition of the Republic of Kazakhstan as one of the biggest players in the international market of raw materials, particularly petroleum.

The world's major political leaders recognize and take into account the potential of the Republic of Kazakhstan in the field of development of commodity economy and attract foreign investment. One of the main issues of the investment activity is the relations of private property and their regulation in the state receiving the investment. Article 6 of the Constitution of the Republic of Kazakhstan recognizes equally and protects public and private property.

In paragraph 1 of the Article 6 of the Constitution of the Republic of Kazakhstan exclusive state ownership of land and its resources was established. The subsoil is of exceptional importance for Kazakhstan having their considerable resources. Bowels of the earth - it's not quite a common property. In most countries minerals, containing the most important natural resources for the state economy, belong to the state completely and nobody else.

The issue of protection of the economic sovereignty of the state is addressed in international law, namely in the United Nations (UN) and expressed in these documents, generally recognize the right of every state to exercise sovereignty over natural resources, and the right of the state to nationalize private property. As a member of the United Nations, the Republic of Kazakhstan in its current investment account norms enshrined in the UN resolutions. It should be noted that the decisions of international organizations and, above all, the resolutions of the UN General Assembly had a significant impact on the legal regulation of investment activity in the Republic of Kazakhstan. Most of the General Assembly resolutions expressly provided for the right of states to expropriate foreign assets according to their economic activities and because of its full sovereign right to control their own natural resources.

The influx of investment in Kazakhstan accelerates the development of enterprises, improves the quality of human capital, creating jobs, attracting advanced technologies and stimulates their proliferation in related industries. Therefore, in the last two decades, Kazakhstan has seen a significant increase in competition for global investment, which in turn raises the problem of the state to develop and implement comprehensive policy measures aimed at increasing the country's attractiveness for investment and investor protection, to this end, The Republic of Kazakhstan continues to form an adequate legal basis. Dialog state investor aims to provide the most attractive business environment in the country.

The lack of objective economic gauges value of natural resources, enabling them to manage with consideration of dynamics and the characteristics of a natural differentiation, and the limited nature of some natural resources, almost always create objective obstacles to equalize the effects of "greening" the latest operating system and cause environmental decision. Unfortunately, it is very far from the biosphere and having problems mainly technical and economic bias. Such a situation cannot be reconciled with the objectives of the reproduction process in nature and did not represent ecological security as part of national security.

Scientific and technological progress by itself may not be sufficient to resolve the contradiction between society and nature. The success of his permit depends entirely on environmental strategy. It is known that countries with developed market economies consume 2-4 times less natural resources per unit of finished product. Thus, a fracture in the interactions of producers with the environment in these countries is noticeable only in the last 10 years when really started to take shape economic mechanism environmental management, including legislative, administrative, social, economic, and other regulators.

Environmental impact as a factor to economic development and the proportion of social reproduction today is largely due to the still prevailing culture of investment in natural resources and environmental protection, established in the last century on the basis of cash rationalism, maximizing income of the owner, regardless of the environmental and social impact.

Investment support conservation in regional natural resources in the country is characterized by two opposite trends: on the one hand, the increasing degradation of the natural systems and disintegration in the conservation and reproduction, and on the other - the changing nature of the investment processes, the emergence of new types of relationships, and the formation of channels and chains of mobile funding, the interaction of economic entities in environmental investing on the basis of their economic interests, and the establishment of a cross-sectoral

environmental system based upon common interests, goals, means, methods, and forms of environmental management

Bowels of the earth shall be inalienable and inseparable. Furthermore, statute of limitations is not applicable to them and it cannot be brought to the court seized. Exploitation of mineral resources, extraction of mineral resources and other uses of these are the monopoly of the state, its exclusive right. It should be noted that the powers of the state, as the subject of ownership of the subsoil, which is closely linked to its prerogatives of the public authority of the sovereign guarantor and protector of mineral resources, ensuring their inherent, inalienable nature conservation and sustainable use.

As a rule the state affects the level of mining operations through the use of administrative and economic instruments, namely, through the distribution of resources and with the fiscal regime. Thus, the state exercises section of economic rent between itself and the investor, thus increasing or decreasing the attractiveness of natural resources.

In some Western countries the economic rent is generated throughout mining as revenue from the sale of minerals extracted, less capital expenditures for exploration and development and operating costs.

No doubt, nature, namely subsoil, is of great importance for the economy of the Republic of Kazakhstan - the key sectors of the economy of the Republic of Kazakhstan to invest in seeking many entrepreneurs. Having given the enormous importance of this industry to the state itself and the specific regulation of the relations arising from the subsurface, the legal aspect is crucial, since the choice of the most promising for investors and the state forms of cooperation, above all, a selection of the most advantageous legal form of the natural resources use of the Republic of Kazakhstan.

Furthermore, wishing to invest their capital in the development of oil or other natural resources sector, investors claim to protect their rights and interests. Promoting its strategic importance of the sector to the state, activities of investors are always under the close supervision of the state, which is the continuous monitoring of the execution of contracts, checks for compliance with legislation in the field of environmental management. Consequently, investors should carefully monitor contract compliance and regulatory requirements.

One of the first laws of Kazakhstan in the mineral resources was the Code of minerals and mineral processing dated May 30, 1992. However, the Code ceased to have effect because it did not meet the needs of the market economy. This is due to the influx of foreign investments into the country, despite the fact that investors, respectively, required legal guarantees for their investments. As a result, the Law "On Foreign Investments" dated 27 December 1994. In this regard, the Code "On Subsoil" in 1992, was unsuitable to the new conditions, as it was designed for a relationship with state-owned enterprises that are dependent on the government. The appearance of foreign capital on the market of Kazakhstan exacerbated the legislative provision of legal relations in the sphere of subsoil use and investment.

Great importance to the subsoil legislation is given in the Constitution of the Republic of Kazakhstan, namely claim 26 Article 6, which declares that in the Republic of Kazakhstan the public and private property shall be recognized and equally protected. State ownership is the land and its resources, water, flora and fauna, and other natural resources. But this land can also be privately owned. No one can be deprived of his property except by a court decision; expropriation of property for public use may be made subject to fair compensation.

The investment policy of the Republic of Kazakhstan is aimed at regulating relations between individuals who are building their relationship by entering into investment contracts. Due to the fact that the national legislation of different countries is different, which consequently leads to a conflict of laws, the states seek to create uniform rules governing the investment relationship between their subjects - natural and legal persons, as well as by the State. Based on these agreements, States commit themselves to provide foreign companies preferential treatment, adequate protection of the property of foreign companies and individuals as well as free transfer of cash income.

The legal uncertainty in the legal regulation of investment relations throughout the many years sets the stage for discussions about the legal nature of the investment agreement. This problem was especially important due to the rapid development of investment and financial activities in the Republic of Kazakhstan. Large companies prefer to invest their money in interest to them and get projects from these investments great dividends. Obviously, such investments are accompanied by significant risks for investors and lack of legal security for participants investing.

Conclusion

Diverse international experience shows that investment is a powerful driver of economic development. However, their effectiveness is greatly enhanced if used. Investments - one of the most important ability for contributing to aggregate, to overcome the crisis influences of the economy development, job creation, technological upgrading of enterprises and subsequent development of the national economy with a larger share of domestic investment.

National program to stimulate domestic and foreign investment in the economy is a link in the chain of legal, regulatory and policy instruments to ensure increase of investment activity in the country. The importance of a foreign capital and investment needs of this type of program would work in unison with the Government Programme of measures to deepen reform.

The program should be based on the main premise: to counter economy slipping into a prolonged depression is an urgent need to increase investment activity, and this policy should be created to attract and use foreign capital and investment. The emphasis should be on the development of specific mechanisms and procedures for the investment process based on external assistance. The inclusion of the Republic of Kazakhstan into the world economy and attracting foreign capital to the production of goods much cheaper than getting credit for the purchase of essential goods, which are still being wasted haphazardly and just multiply the public debt.

The mineral resources sector of Kazakhstan is one of the priority sectors of the economy, ensuring the development of the Republic of Kazakhstan. Attracting foreign investment in the Republic of Kazakhstan, including the oil and gas sector, is possible by the work of creating an attractive investment image of Kazakhstan, which, in the first place with the establishment legislative framework. The fact that in Kazakhstan, today, has invested billions of dollars of foreign capital, most of which occur in the mineral resources sector, confirms the existence of a legal framework in Kazakhstan, creating the necessary conditions to attract foreign investment and efficient use of mineral resources. The presence of an appropriate legislative framework was one major cause of the attractiveness of Kazakhstan for foreign investment.

In the area of particular interest is usage of nature change legislation regarding contracts for subsoil operations, caused by changes in the tax base and the provisions of the legislation on investment. The Republic of Kazakhstan had to cancel a number of agreements in the field of investments in the subsurface, such as: production sharing agreement and the concession contracts for the purpose to increase the protection of national security and compliance with local content, providing the national interests of the citizens and the country.

Accordingly, today, before the Republic is the most important challenge of how clearly to define the concept of the principle of legislation stability, to outline its scope and not depart from this principle in the law and enforcement. This, in turn, will increase the attractiveness of the legal climate for investors and, in general, improve the image of Kazakhstan for business partners.

Given the existing regulatory measures relations on investing in the mineral resources, further development of Kazakhstan's legislation concerning the regulation of investment should cover the following areas:

- Development of a single legal act regulating the access of investors to strategic sectors of the economy;
- Establishing clear criteria of "national security" excluding the possibility of abroad interpretation of its decision-making in relation to investors;

- Introduction of the system verify the absence of a "threat to national security" in terms of investment, with special attention should be paid to investment undertaken by foreign states, international organizations, and also the introduction of transparent decision making for investors.

In addition, the review of investment contracts in using of nature, we can conclude that at present the investment contract is a special type of contract that is not covered by civil law as a separate contract, but concluded in accordance with the contract terms and requirements. Thus, the legislation of the Republic of Kazakhstan needs to be amended in terms of a clear definition of such an important thing as an "investment contract", as the country continues to attract investment and, to a considerable extent, it is in the sphere of subsoil use.

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